

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STACEY J. DEFOOR,)	NO. 62519-5-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
TERRY MARK DEFOOR,)	
)	
<u>Appellant.</u>)	
)	
TERRY DEFOOR and G.W.C., INC.,)	
)	
Appellants,)	UNPUBLISHED OPINION
)	
v.)	FILED: August 16, 2010
)	
STACEY J. DEFOOR,)	
)	
<u>Respondent.</u>)	

Lau, J. — Terry Defoor appeals the trial court’s characterization, valuation, and property distribution following the end of his committed, intimate relationship with Stacey Defoor. She cross-appeals the trial court’s refusal to award her attorney fees. We find no error in the court’s denial of attorney fees or characterization and valuation of the disputed property. But because the trial court improperly counted proceeds from the sale of a community-like asset twice, we reverse the property distribution. We also

instruct the court to clarify the character and allocation of an approximately \$1.6 million debt on a United Bank of Switzerland (UBS) line of credit.¹ We reverse in part and remand for proceedings consistent with this opinion.²

FACTS

Terry and Stacey married in 1987 and divorced in 1992.³ Though they soon reconciled, they never remarried. The couple lived together until their relationship ended on September 20, 2006. Stacey petitioned for an equitable property distribution under the committed, intimate relationship doctrine.⁴

During their cohabitation from 1992 to 2006, Terry and Stacey held themselves out as a happy, committed, married couple. Everyone who was close to them thought they were married, including close friends, neighbors, family members, and business colleagues. They wore wedding rings and pooled their resources. Terry's will named Stacey his personal representative and bequeathed his entire estate to her. Stacey gave Terry a power of attorney before she underwent a surgery in 2002. They also represented themselves as married to insurance companies, lawyers, courts, and, in

¹ The trial court labeled the bank "the United Bank of Sweden," but both parties refer to it as the United Bank of Switzerland.

² We cannot determine from this record whether the trial court would have made the same property distribution between the parties absent these errors.

³ Because the parties have the same last name, we refer to them by their first names for clarity.

⁴ Our Supreme Court now uses the term "committed, intimate relationship" in lieu of "meretricious relationship" to refer to cohabitating couples in a stable, marital-like relationship. Olver v. Fowler, 161 Wn.2d 655, 657 n.1, 168 P.3d 348 (2007).

some situations, the Internal Revenue Service. But because there were unresolved tax liens against Terry until 2005, the couple found it financially advantageous not to remarry. This allowed them to use Stacey's credit to purchase assets and grow their business.

Stacey and Terry were joint and equal owners of GWC, Inc., a Washington for-profit corporation. They used GWC to acquire interest in land that could later be subdivided for residential development. Because Terry had poor credit and tax liens, Stacey enabled many of the corporation's deals to go forward prior to 2005 by solely obligating herself in financing arrangements. Ultimately, GWC's business model evolved to allow it to use option contracts with little or no money down. GWC sales agents would contact individual property owners to acquire options to purchase their property that was then aggregated with neighboring parcels and subdivided. GWC would assign its rights to a development partner like Camwest Development for a fee. The business was lucrative, and they acquired substantial assets over time.

After 1999, Terry and Stacey did not maintain individual or joint bank accounts. Instead, they paid all their expenses through GWC. They regularly disregarded the corporate entity and used GWC as their personal bank account. They treated GWC income as their own.

During trial, Terry asserted that he was the sole owner of GWC and denied he had a committed, intimate relationship with Stacey. But the trial court found Terry's "assertions of a lack of intimacy and lack of committed relationship are not credible," and that "[i]t was the intent of the parties to be in a permanent, long-term relationship, with the expectation of marriage or all of

the benefits and obligations of marriage.” The trial court also found “[o]verwhelming evidence” that the parties were joint and equal owners of GWC. It noted that Stacey was routinely listed on corporate documents as a high ranking officer, she was the corporation’s registered agent, and federal income tax returns showed her as owning fifty percent of the shares. While the only stock certificate presented at trial showed Terry as the sole owner of the corporation, the trial court found that he created this document in April 2006, which “was consistent with [his] consistent practice of creating false documentation to support his financial affairs.”

When they separated, Terry unilaterally removed Stacey as a GWC officer and registered agent and seized control of GWC and its assets. Because Stacey could no longer access GWC accounts, she had no means to pay various mortgages for which she was the sole obligor, including for their house in Duvall, their vacation house in Florida, and the Florida condominium where they had moved her parents. Stacey was able to begin satisfying her obligations only after a superior court judge awarded her \$387,000 of interim relief. During this same period, Terry used GWC income and assets to acquire personal belongings. For example, he purchased a \$2,450,000 home in Kirkland and a new motor home for \$261,185.

Soon after the parties separated, GWC received \$1,275,000 in assignment fees from Camwest for property in Federal Way and the Renton Highlands. Although the fees were paid postseparation, they were based on Terry’s preseparation efforts. Terry’s preseparation efforts contributed to several other GWC/Camwest deals that remained pending at the time of trial. The trial court found that these deals would lead to compensation to GWC in the future

with little or no postseparation effort.

Separate from his dealings with Camwest, Terry also used GWC funds to purchase property on Boren Street in Branson, Missouri (the Boren property). Branson is a nationally known recreation and vacation area. GWC had already acquired substantial properties in the Branson area before Terry and Stacey separated. For example, GWC purchased approximately 100 lots in the area from Stacey's parents for only \$40,000. They agreed to this sale because "they naively anticipated they would reap the ultimate benefits" of a project Terry was planning. GWC spent approximately \$700,000 buying neighboring lots for the project. The properties were more valuable as an assemblage than as individual lots.

After the relationship ended, Terry formed a new corporation, GWC & Associates, Inc. (GWCA), to separate assets and deals from GWC in an attempt to keep them from Stacey. GWCA purchased a two-acre parcel along International Boulevard in Sea-Tac (the Sea-Tac property) for \$1,620,000 pursuant to a joint venture agreement with GWC. Under the agreement, GWC contributed \$1,650,000 in cash and GWCA contributed contract rights to the property, which the agreement stated were worth \$2,650,000. GWC was to receive 25 percent of any profits from the project, while GWCA was to receive 75 percent. The trial court found this agreement to be a sham transaction and considered the Sea-Tac property to be entirely a GWC asset. GWCA paid cash for the Sea-Tac property, using \$1,568,997.82 from UBS loan account 5V 50979 BK.

Terry also sold their Costa Rica condominium, which they had acquired pre-separation with GWC assets, shortly

after his relationship with Stacey ended. Pursuant to a promissory note, he was to be paid \$725,000 one year after the sale. Terry claims he negotiated a reduction in the note in exchange for early payment. He presented documents showing that he received a wire transfer for \$699,990.00 on August 14, 2007, which he then transferred to GWCA's UBS account BK 0264235. He claims this account provided the collateral for the line of credit at UBS that GWCA borrowed against to purchase the Sea-Tac property.

The trial court entered written findings of fact and conclusions of law on September 18, 2008. It concluded that all of Terry and Stacey's assets as of September 20, 2006, were subject to a just and equitable distribution under the committed, intimate relationship doctrine. It attempted to divide these assets equally, but stated, "to the extent there is any uncertainty as to the value of the assets, the equities lay in support of making inferences in favor of [Stacey.]" In particular, it noted that Terry had engaged in a "continued practice of deception" and "pattern of misrepresentation and dishonesty as it relates to his financial dealings" that made it difficult to track their assets with certainty. (Finding of fact 37; conclusion of law 5(e).)

The trial court awarded both Terry and Stacey a list of specific assets that it valued at \$4,533,282 each, including an equalizing cash payment of \$723,652 to Stacey. The court valued the Sea-Tac property at \$1,625,000 based on its purchase price and awarded it to Stacey. It valued the Missouri properties at \$2,660,000 based on Stacey's expert's opinion and awarded the property to Terry. The trial court also credited Terry with the \$725,000 value of the promissory note for sale of the Costa Rica condominium. In addition to the

\$4,533,282 in valued properties, the trial court awarded each party half the value in USB account BK 0264235 as of October 31, 2007 (\$992,194 each). And it awarded half of GWC's interest in pending assignment agreements with Camwest to Stacey through 2011, with decreasing amounts thereafter, through 2019. It explained that it was impossible to accurately determine the degree to which Terry's postseparation efforts, if any, would be necessary to realize the value from pending assignment agreements and that Stacey should retain an interest in the agreements over a long enough time frame to prevent Terry from using delaying tactics to avoid paying Stacey her share.

The trial court allocated GWC's liabilities to Terry "to [the] extent they exist." It concluded that this allocation was equitable because GWC's debts were "denied by, or largely controlled by [Terry]. Furthermore, [Terry] is being awarded the corporation, and its goodwill." GWC's reported debts included \$425,000 in real estate commissions owed to Ed Flanigan and Shelly Hyatt. The trial court did not specifically refer to the \$1,568,997.82 that GWCA borrowed against its UBS credit line.

After the court's decision, Stacey requested an award of attorney fees, which the trial court denied. Both sides appeal.

ANALYSIS

A committed, intimate relationship is a "stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." Olver v. Fowler, 161 Wn.2d 655, 657 n.1, 168 P.3d 348 (2007); Connell v. Francisco, 127 Wn.2d 339, 346, 898 P.2d 831 (1995). When a committed, intimate relationship ends, a court has the

equitable power to distribute property acquired during the relationship regardless of which party has title to the property. Connell, 127 Wn.2d at 351. A trial court disposes of property by (1) determining whether a committed, intimate relationship existed, (2) evaluating each parties' interest in the property acquired during the relationship, and (3) making a just and equitable distribution of their property. In re Marriage of Pennington, 142 Wn.2d 592, 602, 14 P.3d 764 (2000). Only property that would be characterized as community property if the couple were married is subject to division by the court when the relationship ends.⁵ Soltero v. Wimer, 159 Wn.2d 428, 435, 150 P.3d 552 (2007).

On appeal, Terry does not challenge the trial court's finding that he and Stacey were in a committed, intimate relationship. But, he raises several objections to the court's characterization, valuation, and distribution of property. The characterization of property as community or separate is a question of law, reviewed de novo. In re Marriage of Zier, 136 Wn. App. 40, 45, 147 P.3d 624 (2006). But we defer to the trial court's factual findings if they are supported by substantial evidence. Pennington, 142 Wn.2d at 602–03. We will affirm the trial court's valuation of property so long as the value is within the scope of the evidence. In re Marriage of Gillespie, 89 Wn. App. 390, 403, 948 P.2d 1338 (1997). And we review the trial court's distribution of property for abuse of discretion. In re Meretricious Relationship of Sutton & Widner, 85 Wn. App. 487, 491, 933 P.2d 1069 (1997).

⁵ The parties refer to this property as “quasi-community property,” but this term has a different meaning under RCW 26.16.220, so we use the phrase “community-like property.”

Award of Sea-Tac Property

Terry contends the trial court erred by awarding the Sea-Tac property to Stacey because it was his separate property and therefore not before the court for distribution. Property acquired during a committed, intimate relationship is characterized in a similar manner as property acquired during marriage. Connell, 127 Wn.2d at 350. Assets acquired during marriage are presumed to be community property. In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002). To overcome the presumption, a party must demonstrate the asset is separate property by clear and convincing evidence. In re Marriage of Chumbley, 150 Wn.2d 1, 5, 74 P.3d 129 (2003). Assets are separate property if acquired before marriage or during marriage by gift, inheritance, or with the traceable proceeds of separate property. In re Marriage of White, 105 Wn. App. 545, 550, 20 P.3d 481 (2001). In addition, earnings and accumulations acquired after a marriage becomes defunct are separate property. RCW 26.16.140; In re Marriage of Terry, 79 Wn. App. 866, 70, 905 P.2d 935 (1995). The separate or community character of property is established at the point of acquisition. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). But if separate property becomes so commingled with community property that it is impossible to distinguish or apportion it, the entire amount becomes community property by operation of law. Chumbley, 150 Wn.2d at 5.

Terry argues the Sea-Tac property would not have been characterized as community property had he and Stacey been married because he acquired it after his relationship with Stacey ended. But Terry did not acquire the Sea-Tac property in his individual capacity. Rather, the

corporation he and Stacey co-owned acquired the property using community-like funds and credit. “[I]f assets are acquired with community funds they are community assets” 19 Kenneth W. Weber, *Washington Practice: Family & Community Property Law* § 6.12, at 111 (1997). And because the Sea-Tac property was a GWC asset, it was properly before the court as part of its division of the couple’s business assets.

Terry disputes this conclusion based on the joint venture agreement between GWC and GWCA. He argues that the Sea-Tac property was purchased in GWCA’s name under this agreement. But the trial court found that the joint venture agreement was a sham transaction designed to remove GWC’s assets beyond Stacey’s reach. GWC provided all of GWCA’s operating capital. GWCA had no money to purchase the property, but was entitled to 75 percent of any profits. Terry claims the transaction was an “arm’s length agreement.” Appellant’s Opening Br. at 27. But he controlled both GWC and GWCA. GWCA had no assets (other than those transferred from GWC) to ensure repayment of the loan proceeds purportedly used to purchase the Sea-Tac property. And the joint venture agreement did not provide GWC with a security interest in the Sea-Tac property. Under these circumstances and given the undisputed finding that Terry had a “consistent practice of creating false documentation to support his financial affairs,” the trial court’s finding that the GWC/GWCA agreement was a “sham” is supported by substantial evidence. It was not error for the trial court to treat the Sea-Tac property as a GWC asset, subject to division.

Terry also argues that if the Sea-Tac property is a GWC asset, the debt he incurred to acquire it must be a GWC liability. Stacey responds that the trial court expressly allocated this debt to Terry,

citing the court's conclusion of law 6. "It is just and equitable to award to [Terry] all putative and real debts of GWC, due to the fact these debts are denied by, or largely controlled by [him.]" (Emphasis added.) But it is not clear from this conclusion and the factual findings whether the trial court meant to allocate to Terry the UBS line of credit debt Terry claims he incurred to acquire the Sea-Tac property. The trial court did not include this specific debt in its list of debts or expressly address it in its factual findings. Because we cannot determine from the trial court's findings and conclusions whether it allocated the debt to Terry as part of its fair and equitable property distribution, we remand for additional findings and conclusions to clarify the character and allocation of this debt.

Valuation of Sea-Tac and Branson Properties

Terry next argues that the trial court undervalued the Sea-Tac property it awarded to Stacey and overvalued the Branson properties it awarded to him. But the trial court has broad discretion in valuing property and this court will not disturb its decision so long as the valuation is within the scope of the evidence. Gillespie, 89 Wn. App. at 403. The trial court's discretion includes selecting different valuation dates, such as the date of separation or the date of trial, and different valuation dates for different properties. Koher v. Morgan, 93 Wn. App. 398, 404, 968 P.2d 920 (1998); 20 Kenneth W. Weber, *Washington Practice: Family & Community Property Law* § 32.7, at 167 (1997).

Here, the trial court valued the Sea-Tac property at \$1,625,000 based on its purchase price of \$1,620,000 approximately six months before trial. Terry argues it should have instead valued the property

at \$2,650,000 based on his testimony about its fair market value. At trial, he testified that he purchased the property at a “firesale” price from a terminally ill seller. He claimed the property’s true value was more like \$2,650,000 based on his own market research.⁶ But the trial court was not required to credit this testimony. Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003) (“credibility determinations are solely for the trier of fact [and] cannot be reviewed on appeal.”) And evidence of purchase price may be used to determine the value of land. State v. Reano, 67 Wn.2d 768, 772, 409 P.2d 853 (1966). The trial court did not abuse its discretion by selecting the lower value for the Sea-Tac property.

Terry also claims the trial court overvalued the Branson properties at \$2,660,000 and that they are actually worth no more than their acquisition cost, approximately \$800,000. But the trial court found that the collection of properties GWC had acquired was worth far more than the individual parcels, and Terry does not challenge this finding. The trial court also noted that Terry was able to acquire 100 lots from Stacey’s parents for only \$40,000 by making representations that they would ultimately benefit, which her parents “naively” believed. Stacey testified that she would have accepted an award of Branson based on a \$2,600,000 valuation, and her expert estimated the value of the aggregate properties at \$2,660,000. Terry fails to show the trial court abused its discretion.⁷

⁶ Terry incorporated this value into the GWC/GWCA joint venture agreement, signed on July 1, 2007.

⁷ Terry also argues the court erred by including the Boren property in its distribution of community-like assets. He notes that unlike the other Branson-area

Pending GWC/Camwest Projects

Terry contends the trial court erred in awarding Stacey proceeds from GWC/Camwest assignment agreements that were pending at the time of their separation. He argues the trial court “erred by giving no credit whatsoever” to his postseparation efforts that would be necessary to realize these proceeds. Appellant’s Opening Br. at 34. But this is inaccurate. The trial court awarded him an increasing share of any future proceeds over time to acknowledge his postseparation efforts and the fact that these efforts would create a separate interest in the proceeds that would also increase over time. Terry challenges the court’s finding that the assignment agreements would lead to compensation “without any post separation efforts of the parties,” but he omits the remainder of the sentence that specifically acknowledges that Terry’s continued efforts might be necessary to extend certain option contracts once expired.

The trial court also found, “It is not possible to determine with precision the percentage of [Terry’s] additional efforts, if any, which will be necessary to bring in future income from the current assignment agreements with Camwest.” Based on this finding, which Terry does not challenge, the trial court determined that the most equitable distribution of future proceeds would be to initially award Stacey half the proceeds, followed by a declining percentage over time. It chose a multi-year time

properties, he acquired the property on Boren street postseparation. But it is undisputed that he used GWC funds to acquire the property and that it was an asset of the jointly owned corporation. Therefore, as with the Sea-Tac property, it was properly before the court for distribution.

frame so that Terry would not have an incentive to delay seeking payment to avoid paying Stacey her share. Given Terry's undisputed hostile conduct towards Stacey following their separation, this was not an abuse of discretion.

Promissory Note for Sale of Costa Rica Condominium

Terry argues the trial court erred in crediting him with the promissory note for the Costa Rica condominium in its property distribution. We agree. The trial court's stated intent was to make an equal distribution of community-like assets. It awarded both Terry and Stacey property that it valued at \$4,533,282. The award to Terry included \$725,000 for the Costa Rica condominium promissory note. The trial court also awarded half the funds in UBS account BK 0264235 to Terry and half to Stacey. But the record shows that Terry had already received payment on the promissory note (though for the reduced amount of \$699,990.00) and that these funds were deposited in the UBS account. Specifically, Terry presented evidence of wire transfers from a financial institution in Costa Rica to a bank in Panama to US Bank to UBS account BK 0264235 between August 14 and 16, 2007. By crediting the same funds to Terry twice, the trial court did not achieve its stated intent of an equal division of community-like assets. On remand, the trial court is instructed to allocate the value of the Costa Rica condominium only once.

Sales Agent Debts

Terry argues the trial court erred by failing to include \$425,000 in GWC liabilities when it calculated the assets and liabilities to be divided between the parties. He cites testimony from GWC sales agents that they were owed \$425,000 in commissions and GWC tax returns corroborating this

claim.⁸ But the trial court found that these debts were unsubstantiated: “It appears they may be carried on the GWC, Inc. books to avoid unfavorable tax implications, and are not in fact ‘real.’”

While Terry challenges this finding, we conclude it is supported by substantial evidence in the record. Testimony showed that GWC carried hundreds of thousands in debt to “Olympic Equities” on its books for several years in violation of accepted accounting principles. Other evidence also showed that Terry had denied owing anything to Hyatt. And Flanigan had taken no action to pursue any claim against GWC. In any event, the trial court concluded these debts, to the extent they might be real, should be allocated to Terry as part of a just and equitable distribution because it also awarded him the corporation and its goodwill. Terry fails to show that the trial court abused its discretion.

Attorney Fees

In her cross appeal, Stacey advances several equitable and statutory theories for why the trial court erred in denying her request for attorney fees. We review the denial of attorney fees for an abuse of discretion. In re Marriage of Morrow, 53 Wn. App. 579, 590, 770 P.2d 197 (1989). “Under the American rule, the parties are responsible for their own attorney fees unless an award of fees is authorized by a private agreement, statute, or a recognized ground of equity.” Bentzen v. Demmons, 68 Wn. App. 339, 349, 842 P.2d 1015 (1993).

⁸ Ed Flanigan testified that GWC owed him \$100,000, and Shelly Hyatt testified that GWC owed her \$400,000. But the 2006 GWC tax return indicated that Hyatt was only owed \$325,000.

Stacey first argues the trial court should have awarded her fees because Terry used their joint, community-like funds to pay for his fees, thereby reducing the funds available for distribution. She claims this resulted in her receiving less than she otherwise would have from the subsequent property distribution. The equitable solution, she contends, would have been for the trial court to order Terry to pay half of her fees. In essence, her argument is that the trial court's property distribution was inequitable because it failed to take into account Terry's postseparation expenditures of community-like funds. But the trial court specifically found that Stacey's receipt of over \$400,000 in community-like funds pretrial, along with Terry's mortgage payments towards their Duvall house "shall be considered a substantially equal off-set to [his] unilateral post-separation expenditure of the parties' assets." Stacey challenges this finding, asserting that Terry's postseparation expenditures exceeded hers. But she points to no significant expenditures not accounted for in the trial court's property distribution. And while she claims he must have accumulated over \$1 million in attorney fees (citing her own bill of almost \$1.4 million), she offers no evidence that he actually paid that amount from their community-like funds. Stacey fails to show that the trial court abused its discretion on this basis.

She next argues that she is entitled to mandatory indemnification under Washington's Business Corporation Act for successfully defending against Terry and GWC's lawsuit against her.⁹ Under RCW 23B.08.520, "a corporation shall indemnify a

⁹ After Stacey filed her petition for property distribution, Terry filed suit against her on his and GWC's behalf, claiming that she defamed him (by falsely accusing him of steroid abuse), trespassed on GWC property, and tortiously interfered with GWC's

director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation.” The justification for mandatory indemnification is that if a person is sued because the person is a director, the corporation should pay the resulting litigation expenses. But Stacey was not sued because of her status as a director of GWC. Indeed, Terry’s complaint asserted that she was not a shareholder, director, or officer of the corporation. Instead, the complaint referred to her as “the former spouse of Terry Defoor,” and it asserted claims against her based on her allegedly tortious personal actions toward Terry and GWC. Terry could have brought the same action against Stacey even if she had not been a corporate officer. Consequently, the trial court correctly determined that Stacey was not “a party because of being a director of GWC,” and we reject her claim for attorney fees on this basis.

Stacey also contends that under RCW 23B.16.040, she is entitled to attorney fees incurred to establish her shareholder status and obtain various corporate records. This statute provides,

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RCW 23B.16.020 (2) and (3) may apply to the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order

business affairs in Branson.

RCW 23B.16.040(2), (3). Stacey contends that she requested corporate records from GWC and had to resort to a subpoena to obtain them. Cross Appellant's Opening Br. at 46. Thus, she argues, she was entitled to an attorney fee award and the trial court abused its discretion by denying her request.

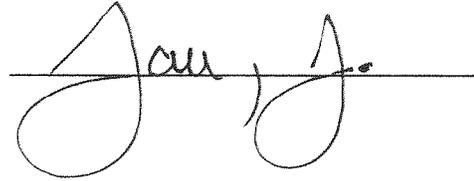
But a trial court only abuses its discretion when its decision is based on untenable grounds or is made for untenable reasons. Nakata v. Blue Bird, Inc., 146 Wn. App. 267, 276, 191 P.3d 900 (2008). Here, the trial court denied the request after finding that Stacey failed to demonstrate she followed the statutory prerequisites for an attorney fee award under RCW 23B.16.040. The trial court noted that Stacey did not request an order permitting inspection and copying of corporate records as envisioned under this statute. Instead, it used the discovery process and the issue of "costs and expenses to obtain corporate documents was litigated in each individual discovery motion." Under these circumstances, Stacey fails to show that the trial court abused its discretion.

Finally, Stacey also seeks attorney fees on appeal pursuant to RAP 18.1. She argues that she was entitled to fees below, so she should receive fees on appeal. "[I]n general, where a prevailing party is entitled to attorney fees below, they are entitled to attorney fees if they prevail on appeal." Sharbono v. Universal Underwriters Ins. Co., 139 Wn. App. 383, 423, 161 P.3d 406 (2007). Because Stacey was not entitled to fees below, we decline to award her fees on appeal. Stacey also argues this court should recognize the availability of attorney fees in committed, intimate relationship cases as a matter of equity and award her fees on this basis. Without deciding whether this court has authority to make such an award, we

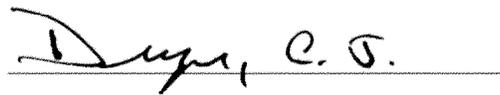
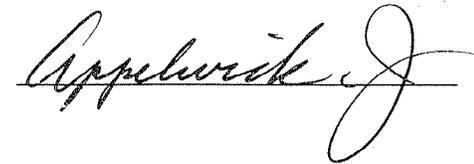
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decline to do so in this case.

We reverse in part and remand for further proceedings consistent with this opinion.

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WE CONCUR:

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